

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

DONNA NEWCOMB, as the  
natural mother and next friend  
to James Anthony Newcomb

PLAINTIFF

v.

No. 1:97cv264-D-A

OKOLONA MUNICIPAL SEPARATE  
SCHOOL DISTRICT et al.

DEFENDANTS

OPINION

Presently before the court is the motion of the Defendants for partial summary judgment. After considering the motion, the court finds that it should be granted only as to the Plaintiff's federal claims and that the Plaintiff's federal claims should be dismissed with prejudice. As to the Plaintiff's state-law claims, the court declines to exercise supplemental jurisdiction over them and shall dismiss them without prejudice.

Factual Background

During the 1995-96 school year, James Anthony Newcomb was a learning-disabled fourth-grade student at Okolona Elementary School, a public school in Okolona, Mississippi. At the beginning of that school year, Anthony's mother Donna Newcomb submitted a form to Okolona Elementary School stating that Anthony was not to be corporally punished during that year. On or about May 21, 1996, Anthony, who is white, called a black female classmate a "nigger." According to Ms. Newcomb, Anthony's teacher Margia Bankhead, who is black, punished Anthony for using the racial slur by striking Anthony three times in the buttocks with a paddle. (Deposition of Donna Newcomb, p. 30). The next day, Ms. Bankhead escorted Anthony to another teacher, Michael Jackson, who is also black, for further punishment. (Deposition of Donna Newcomb, p. 40). According to the complaint, Mr. Jackson acted as follows:

Jackson stood Anthony up in front of the classroom and asked him how many "niggers" did he see in the class, and upon the prompting of Mr. Jackson, [Anthony] counted thirteen blacks and said "thirteen." Mr. Jackson asked something to the effect of if that included himself and Ms. Bankhead, and Anthony, again at Jackson's prompting, stated that it did. At that point, Jackson, apparently with a paddle of some kind, struck Anthony so hard that it caused a very large bruise on his buttocks.

Complaint ¶ VII. In stating these facts, the court has drawn all legitimate factual inferences in favor of the Plaintiff.

#### Standard of Review

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986) ("[T]he burden on the moving party may be discharged by 'showing' . . . that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by . . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

#### Discussion

As a result of the paddling, Ms. Newcomb filed this action on Anthony's behalf against the Okolona Municipal Separate School District and the following individuals in their individual and official capacities: Ms. Bankhead; Mr. Jackson; Barbara McCalla, the Principal of Okolona Elementary School; and Jim McCalla, the Superintendent of Okolona Municipal Separate School District. In the complaint, Ms. Newcomb asserts inter alia that "[t]he actions of the Defendants constitute an invasion of Plaintiff's liberty interests under United States Constitution Amendment

V and due process rights under the United States Constitution Amendment XIV.” Complaint ¶ XV. Because the Fourteenth Amendment to the United States Constitution applies the Fifth Amendment’s due process guarantees to the States, the court will construe Ms. Newcomb’s complaint to assert violations of Anthony’s procedural and substantive due process rights under the Fourteenth Amendment. See Blackburn v. Marshall City, 42 F.3d 925, 930 n.3 (5<sup>th</sup> Cir. 1995) (“Because the due process component of the Fifth Amendment applies only to federal actors, we will analyze [a due process claim against a state actor] under the Fourteenth Amendment.”).

The court first addresses the Plaintiff’s procedural due process claim.

The Fourteenth Amendment prohibits any state deprivation of life, liberty, or property without due process of law. Application of this prohibition requires the familiar two-stage analysis: We must first ask whether the asserted individual interests are encompassed within the Fourteenth Amendment’s protection of “life, liberty or property”; if protected interests are implicated, we then must decide what procedures constitute “due process of law.”

Ingraham v. Wright, 430 U.S. 651, 672, 97 S. Ct. 1401, 1413, 51 L. Ed. 2d 711 (1977).

“[C]orporal punishment in public schools implicates a constitutionally protected liberty interest.” Ingraham, 430 U.S. at 672, 97 S. Ct. at 1413. However, the Fourteenth Amendment’s requirement of procedural due process is satisfied where there are “sufficient post-punishment safeguards.” Fee v. Herndon, 900 F.2d 804, 808 (5<sup>th</sup> Cir. 1990) (citing Ingraham, 430 U.S. at 682, 97 S. Ct. at 1418). In Harris v. Tate County School District, this court ruled that Mississippi does provide such safeguards. 882 F. Supp. 90, 91 (N.D. Miss. 1995) (Senter, C.J.). Notably, in this case, the Plaintiff invoked one of those safeguards by filing criminal charges against Ms. Bankhead and Mr. Jackson. Considering the post-punishment safeguards which are available in Mississippi, the court finds as a matter of law that the paddling which Anthony received did not violate his procedural due process rights.

The court now addresses the Plaintiff’s substantive due process claim. “[C]orporal punishment in public schools ‘is a deprivation of substantive due process when it is arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning.’” Fee, 900 F.2d at 808. “[S]tates that affirmatively proscribe and remedy mistreatment of students by educators do not, by definition, act ‘arbitrarily,’ a necessary predicate for substantive due process relief.” Id. Having already found that Mississippi proscribes and remedies mistreatment of students by educators, the court must also find as a matter of law that the paddling which Anthony received did not violate his substantive due process rights.

In sum, there is no genuine issue as to whether any Defendant violated Anthony’s substantive or procedural due process rights. The Defendants are entitled to judgment as a matter of law as to the Plaintiff’s Fourteenth Amendment claims. The only remaining claims are for alleged violations of state law. The court declines to exercise supplemental jurisdiction over the state-law claims and shall dismiss them without prejudice. See 28 U.S.C. § 1367(c)(3).

A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_ day of January 1999.

---

United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

DONNA NEWCOMB, as the  
natural mother and next friend  
to James Anthony Newcomb

PLAINTIFF

v.

No. 1:97cv264-D-A

OKOLONA MUNICIPAL SEPARATE  
SCHOOL DISTRICT et al.

DEFENDANTS

ORDER PARTIALLY GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT,  
DISMISSING FEDERAL CLAIMS WITH PREJUDICE, and  
DISMISSING STATE-LAW CLAIMS WITHOUT PREJUDICE

Pursuant to an opinion issued today, it is hereby ORDERED that

- (1) the Defendant's motion for partial summary judgment is GRANTED IN PART; the motion is granted only as to the Plaintiff's federal claims;
- (2) the Plaintiff's federal claims are DISMISSED WITH PREJUDICE;
- (3) the Plaintiff's state-law claims are DISMISSED WITHOUT PREJUDICE; and
- (4) this case is CLOSED.

SO ORDERED, this the \_\_\_\_ day of January 1999.

\_\_\_\_\_  
United States District Judge